

LEASE OF RAILROAD EQUIPMENT

Dated as of September 19, 1973

7162

RECORDATION NO. _____ Filed & Recorded

Between

SEP 24 1973 -11 00 AM

INTERSTATE COMMERCE COMMISSION

GUNDERSON, INC.

and

BURLINGTON NORTHERN INC.

Covering

176 - 100-Ton Covered Hopper Cars

LEASE AGREEMENT

THIS AGREEMENT made this 19th day of September, 1973, by and between GUNDERSON, INC. (hereinafter sometimes called the Lessor or Manufacturer) and BURLINGTON NORTHERN INC. (hereinafter sometimes called the Lessee or Railroad)

WITNESSETH:

The Manufacturer and the Railroad heretofore entered into a Purchase Agreement dated as of March 21, 1973, No. BUR-E-OB-2992-3, whereunder the Manufacturer agreed to construct and deliver to the Railroad, and the Railroad agreed to accept and pay for the following railroad equipment (hereinafter called Cars): One Hundred Seventy-Six (176) 100-ton covered hopper cars, numbered BN 452424 through 452599, both inclusive. Purchase Agreement is by reference made a part of this Agreement as fully as though expressly set forth herein.

Delivery of the Cars is scheduled to begin September 20, 1973. However, inasmuch as the Railroad has not as yet consummated financing arrangements, it is not in position to pay for the One Hundred Seventy-Six (176) Cars under the terms of the Purchase Agreement at the time of delivery. The Railroad represents that such financing arrangements will be consummated, however, on or before October 15, 1973. The Railroad (in order that it may use the Cars pending completion of the above financing arrangements) has arranged with the Manufacturer to give it temporary custody and possession of the Cars upon their completion, solely as a lessee of such Cars, and the Manufacturer is willing to do so upon the terms and conditions hereinafter stated.

For the use and rental of each car the Railroad agrees to pay the sum of One Dollar (\$1.00) and other good and valuable consideration. The term of this lease shall cease on October 15, 1973 or upon consummation of the aforesaid financing arrangements, whichever occurs later.

After Railroad's representative finds that each Car upon completion has been built in accordance with the requirements of the Purchase Agreement and upon delivery of

each Car to the delivery point, the Railroad's representative will execute a certificate of acceptance acknowledging the receipt of delivery of each Car under this Agreement. Title to the Cars shall remain in the Manufacturer and the Railroad's right and interest therein is and shall be solely that of possession, custody and use as lessee under this Agreement. Transfer of title shall be effected only at the time of delivery of the bill of sale. The Railroad, without expense to the Manufacturer, will promptly cause this Agreement to be filed with the Interstate Commerce Commission for recordation under Section 20c of the Interstate Commerce Act. In addition, the Railroad shall do such other acts as may be required by law, or reasonably requested by the Manufacturer, for the protection of the Manufacturer's title to and interest in the Cars.

The Railroad agrees that it will permit no liens of any kind to attach to the Cars; and that it will

- (a) indemnify and save harmless the Manufacturer from any and all claims, expenses or liabilities of whatsoever kind; and
- (b) pay any and all taxes, fines, charges and penalties

that may accrue or be assessed or imposed upon the Cars or the Manufacturer because of its ownership or because of the use, operation, management or handling of the Cars by the Railroad during the term of this Agreement. The Railroad's obligations contained in this paragraph shall survive the termination by mutual agreement or otherwise of this Agreement.

The Railroad will, at its own expense, keep and maintain the Cars in good order and running condition and will at its option repair or replace or promptly pay to Manufacturer the purchase price in cash of those Cars which may be damaged or destroyed by any cause during the term of this Agreement. If payment is made in cash for a damaged or destroyed Car as aforesaid, rental for such Car shall cease to accrue at the time of such payment. Upon the expiration or other termination of this Agreement the Railroad will surrender and deliver up the Cars in good order and running condition to the Manufacturer free of all charges at the point designated by the Manufacturer.

All or any of the rights, benefits or advantages of the Manufacturer, including the right to receive payment of the rental provided for herein, or the right to receive the purchase price of the Cars as provided in the Purchase Agreement, may be assigned by Manufacturer and reassigned

by any assignee at any time or from time to time, provided, however, that no such assignment shall subject any such assignee to any of Manufacturer's guarantees, warranties, indemnities or any other obligations contained in this Agreement or in the Purchase Agreement relating to the Cars. In the event Manufacturer assigns its rights to receive the payments herein and/or under the Proposal, and the Railroad receives written notice thereof from the Manufacturer, together with a counterpart of such assignment stating the identity and the post office address of the assignee, all payments thereafter to be made by the Railroad under this Agreement shall, to the extent so assigned, be made to the assignee against proper receipt therefor in form satisfactory to the Railroad.

In the event of any assignment of the Manufacturer of its rights to receive any payments under this Agreement or under the Purchase Agreement, the rights of such assignee to such payments as may be assigned together with any other rights hereunder which can be and are so assigned, shall not be subject to any defense, set-off, counterclaim or recoupment whatsoever arising out of any breach of any obligation of the Manufacturer in respect to the Cars, nor subject to any defense, set-off, counterclaim or recoupment whatsoever arising by reason of any other indebtedness or liability at any time owing to the Railroad by the Manufacturer. Any and all such obligations, howsoever arising, shall be and remain enforceable by the Railroad, its successors and assigns only against the Manufacturer and its successors and assigns (other than assignees as such of rights, benefits or advantages assigned pursuant to this Agreement).

The Railroad agrees with the Manufacturer that the execution by the Manufacturer of this Agreement or the delivery by the Manufacturer to the Railroad of the Cars, as contemplated by this Agreement, shall not relieve the Railroad of its obligations to accept, take and pay for the cars in accordance with the terms of the Purchase Agreement, or impair any of the Manufacturer's rights under the Purchase Agreement.

GUNDERSON, INC.

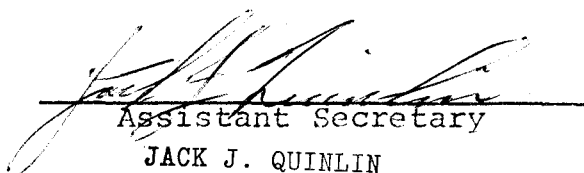
ATTEST:

By



~~Vice~~ President

C. BRUCE WARD
PRESIDENT


Assistant Secretary

JACK J. QUINLIN
ASST. SECRETARY

BURLINGTON NORTHERN INC.


ATTEST:

By W. K. Bush
Vice President

G. L. Stenmark
Assistant Secretary

STATE OF OREGON)
) SS
COUNTY OF MULTNOMAH)

On this *21st* day of *September*, 1973, before me personally appeared *C. Bruce Ward*, to me personally known, who, being duly sworn, says that he is *President* of GUNDERSON, INC., that the seal affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.



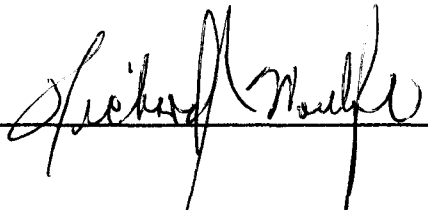
Notary Public

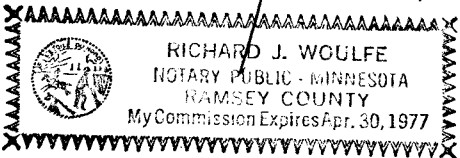
My Commission Expires: SEP 21 1975

(SEAL)

STATE OF MINNESOTA)
) SS
COUNTY OF RAMSEY)

On this 19th day of September, 1973, before me personally appeared W.K. Bush, to me personally known, who, being by me duly sworn, says that he is a Vice President of BURLINGTON NORTHERN INC., that the seal affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.





(SEAL)